EDITORIALS.

IN CASE OF FAMILY DESERTION OR NON-SUPPORT.

The article on the Court of Domestic Relations of Chicago, by Mr. William H. Baldwin, which appears at page 400 ff. in the last issue of this Journal, calls attention to a department of penology that has a character largely its own. Ordinarily the offender and the individual or the individuals who are injured have diverse interests. The punishment of the former, therefore, does not interfere with the welfare of the latter. Indeed, the injured may experience a considerable degree of satisfaction because of the legally inflicted discomfiture of the offender. In those cases, however, that come before the Court of Domestic Relations the offender and the injured, if husband and wife, have legally assumed common interests. If parent and child, once more, their life is common, and the restriction of one is the restriction of the other. The plaintiff and the defendant are representatives of a particular family—a particular unit in our social organization. This being the case, therefore, however carefully we may guard the dependents of convicted murderers, etc., from misfortune, we ought here to be particularly zealous lest in applying correctives we enhance that suffering of wife or children or both, on account of which the action was brought. This should be especially upon our conscience. To meet the situation we must provide for dealing sharply and quickly with the deserter or non-supporter. He must know exactly what to expect—and so must his family. To prevent pauperization, and in consequence, probably, forcing the unprotected into crime, these dependents must be supplied by their natural guardian, and with the least possible interruption or disturbance of normal domestic relations.

This suggests the query whether the deserter or non-supporter, or both, as the case may be, should be dealt with as a felon under the law or merely as a misdemeanant. One of the considerations that has arisen in this connection is the need of providing for occasional extradition of a deserter who has fled the state. There is an impression that extradition can not be secured in the case of an offense less serious than felony. As Mr. Baldwin, in his address before the National Conference of Charities and Corrections at Boston, June 10, 1911, proves, it is a mistaken impression. The constitution of the United States in defining the extraditable person *(Art. 4, Sec. 2)* says: "A person charged in any state with treason, felony, *or other crime,*" etc. And this, as Mr. Bald-

win points out, was confirmed fifty years ago by a decision of the Supreme court of the United States *(24 Howard, U. S. 66)* with reference to "treason, felony, or other crime," in the following language: "The word crime of itself includes every offense, from the highest to the lowest in the grade of offenses, and includes what are called 'misdemeanors' as well as treason and felony."

Nothing more is needed to prove the extraditable character of misdemeanor but there is further proof of the most cogent kind: the fact that misdemeanants actually are, in many cases, extradited—moved from one state to another with facility and despatch. Here one should notice Mr. Baldwin's statistics, in the address referred to, which show that in New Jersey, where desertion is misdemeanor, there is a higher proportion of extraditions compared to the population than in any jurisdiction in which the offense is a felony. In Colorado, Illinois, Delaware, Georgia, Kansas, Kentucky, Massachusetts, Maryland, Mississippi, Montana, New Mexico, New Hampshire, North Carolina, Pennsylvania, Vermont, and Wyoming the offense is misdemeanor also, and in all but Mississippi, New Mexico, New Hampshire, Vermont and Wyoming extraditions in greater or smaller number have occurred.

But the strongest reasons against making the offense a felony are in the first place, that the family has already been hard pushed by necessity occasioned by an indolent or reckless head, and to place him in prison is simply to aggravate the condition that led to the complaint against him. It is like fining the drunkard who has deprived his family of bread to supply himself with liquor; secondly, the case is usually begun in a lower court which has no power, and which often releases the defendant on the mere promise of support, when there is no machinery to secure it; it is much more difficult to get a conviction in a felony case, and the result is that many who should fare otherwise go scot free of all responsibility. As the secretary of the Humane Society of San Francisco, quoted in Mr. Baldwin's address, said, "The machinery is too big for the material handled."

The court that handles these cases should be a great probation institution with a group of trained probation officials at its disposal, with power to imprison at hard labor, the compensation for which should go to the family; with power also to forego commitment on condition that at stated intervals a specified sum be paid to a representative of the court for the support of the family concerned—a noteworthy feature of Judge Goodnow's court in Chicago.

Certainly, here as elsewhere, in penology and in education at large,

it is of the utmost importance that failure to perform a social obligation should be followed by instantaneous correction. Whatever delays or makes it uncertain is mischievous.

The uniform law, proposed by Mr. Baldwin, and published in this issue at page 618 ff. is, with a few modifications as indicated in the note appended to the law, practically what the Commission on Uniform State Laws had already proposed. It provides that desertion or non-support be treated promptly and effectively as misdemeanor. It covers all the points that arise, and if generally enacted, it should do much to solve a perplexing social problem.

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EXAMINATION BY TRIAL JUDGE.

The Supreme Court of Kansas states (*State v. Keehn,* 85 Kan. 765) that it would appear from an Illinois opinion quoted that, while the trial judge has ample authority to conduct an extended examination of a witness, it is seldom safe for him to undertake to exercise it. The Kansas court takes a different view, stating that the purpose of a criminal trial is to ascertain the truth about the matters charged in the information, and that it is a part of the business of the judge to see that this end is attained. The trial judge says the Kansas court is not a dumb moderator over a contest, but an integral factor in the discovery and elucidation of the facts. He is not bound to rest content with the modicum of evidence doled out by counsel, but he may aid the jury in obtaining a comprehension of the facts. "Therefore, whenever in his judgment the proceeding is not being conducted in a way to accomplish the purpose for which alone it is instituted—the full development of the truth—or whenever he can effect a better accomplishment of the purpose, he not only has the right but it is his duty to take part." The court adds that there are limitations upon this power but that they are merely those which good sense and propriety suggest.

It would appear from the above case that a trial judge has not been "shorn of his common law rights" as has been expressed by some well known men, and that in some jurisdictions, notably Kansas and Georgia, he has exercisd the particular right to examine witnesses in order to get at the merits of the case. The writer does not attempt to assert that a judge has this right in all jurisdictions, as he has attempted no exhaustive examination of the statutes of all the states, but it is apparent that the restoration of the judge to his commanding position occupied at common law is not, in some jurisdictions, a question of law but of ex-